IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4897 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AVALOKITA B DESAI

Versus

STATE OF GUJARAT

Appearance:

MR MJ THAKORE for Petitioner

Mr.K.P. Raval, ASST GOVT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 16/02/2001

ORAL JUDGEMENT

The present petition is filed being aggrieved of the impugned order passed by respondent no.4 dated 27.6.1991, Annexure 'E' to the petition. By the order in question the pay of the petitioner is fixed in the pay scale of Rs.4500 -- 150 -- 5700 -- 200 -- 7300/- with effect from 1.1.1986 at Rs.5250/-.

2. The case of the petitioner is that the petitioner

at the time of retirement was working as Director of Post Graduate Medical Studies & Research and Professor & Head of the Department of Paediatric at B.J. Medical College. Before the petitioner came to be appointed on the post of Director, she was working as Medical Superintendent of Civil Hospital, Ahmedabad. It was by an order dated 30.3.1983 that the petitioner came to be transferred and appointed on the newly created post of Director. A copy of Government Resolution dated 30.1.1981 is produced at Annexure 'A' to the petition, which says that earlier, pre graduation and post graduation, both were under the administrative control of the Dean of Medical College, but then looking to the increase in the strength of students in Post Graduate Studies for the administrative convenience, the Post Graduate matters are sought to be placed under the newly created post of Director, while the pre graduation matters are continued to be under the Dean of Medical College. It is also provided in the said Govt. Resolution that the post of Director is to be filled in by giving additional charge to any professor of B.J. Medical College, who will have to shoulder additional responsibility of the post along with the duties of the post of Professor and for that additional responsibility the incumbent concerned will be paid and additional amount of Rs.200/- (subsequently said amount was increased to Rs.300/-).

3. The petitioner has also produced a copy of the seniority list under the Govt. Circular dated 31.3.1986 which says that seniority list of the persons holding the post of Dean/ Medical Supdt. in Medical Colleges/ Hospital of the Gujarat State as on 1.2.1985. In the said seniority list, the name of the petitioner appears at serial no.2. It is also required to be noted at this juncture that by order dated 30.3.1983 vide item no.2, Dr.J.N. Patel, Professor of Medicine, B.J. Medical College, Ahmedabad is transferred and appointed as Dean, B.J. Medical College, Ahmedabad. By item 3, Dr.R.C. Shah, Professor of Physiology, B.J. Medical College, Ahmedabad is transferred and appointed as Superintendent, Civil Hospital, Ahmedabad relieving Dr.(Mrs.) A.B. Desai, Professor of Paediatrics of the additional charge of the post of Medical Sudt., Civil Hospital, Ahmedabad. It is also required to be noted that Govt. Resolution dated 30.1.1981 has clearly recorded that the post of Director will be equivalent to that of Dean of Medical College. Mr.Thakore, learned advocate has rightly submitted that creation of the post of Director was a result of split of the post of Dean of Medical College on account of increase in work due to increase in strength of the PG students. Mr.Thakore also produced schedule

'C' to the rules-- Gujarat Civil Services (Revision of Pay) Amendment Rules, 1991. Item 3 of which reads as under:

"3. Dean, Medical College/ Medical Superintendent.

Present scale : Rs.1600-- 2000

Revised scale: Rs.6300-- 7300

Remarks: With the grant of the revised scale, the special pay of Rs.300/- p.m sanctioned to the Dean, Medical College and Director, Post Graduate Studies, Medial College under F.D., G.R. No.ECR 1088-- 194M dated 4.8.88 is discontinued and the recovery of special pay paid will be adjusted against amounts of payments with reference to the revised scales."

4. From the said item it is clear that the Dean, Medial College/ Medical Supdt. are carrying same pay scale, i.e. Rs.1600-- 2000, which is revised to Rs.6300-- 7300/-. It is already discussed hereinabove that the post of Dean, Medical College and the post of Director are equivalent and therefore, when the Dean, Medical College is given benefit of revised pay scale of Rs.6300-- 7300/-, there is no justification in fixing the petitioner's pay in the scale of Rs.4500-- 7300/-.

5. 'Remarks' column against entry no.3 is also important for the purpose of understanding the intention of the authority while effecting the revision of pay. What is stated is that, "the special pay of Rs.300/- per month sanctioned to the dean, Medical College and Director, Post Graduation Studies, Medical College is discontinued and recovery of special pay paid is subject to adjustment against the amounts payable under revised pay scale". It is clear from the 'remarks' that the post of Dean, Medical College and Director, Post Graduate Studies and Medical Superintendent were the posts held by the professors on the basis of seniority and they were entitled to a special pay. On accrual of revised pay said special pay of Rs.300/- is discontinued and payment made towards special pay is made subject to adjustment against the revised pay scale. In the case of the petitioner also when she was holding the post of Director, she was getting special pay, which after revision of pay is discontinued and instead of paying her revised pay scale of Rs.6300-- 7300/-, her pay is fixed in the pay scale of Rs.4500-- 7300/-.

6. Learned Assistant Government Pleader, Mr.Raval submitted that an affidavit in reply is filed by Shri B.H. Goswami, Under Secretary, Health and Family Welfare Department and as stated therein the petitioner was earlier serving as Medical Supdt., Civil Hospital, Ahmedabad. From there she was transferred to the newly created post of Director, PG Studies and Research, she was entitled to get Rs.200/- as special pay. Mr.Raval was not able to point out as to what would have been the pay fixation of the petitioner had she continued to be the Medical Superintendent, Civil Hospital, Ahmedabad, who according to schedule 'C' of the aforesaid rules was equivalent to Dean, Medical College and was to get revised pay scale of Rs.6300-- 7300/-. It is also required to be noted that it is not the case of the department that the petitioner was not a regular incumbent on the post of Medical Supdt., Civil Hospital, Ahmedabad. In absence of any such case of the department, the petitioner cannot be a loser only because she was transferred and appointed on the post of Director, PG Studies in the matter of pay fixation in the revised pay. On the contrary, the affidavit in reply clearly states that,

> "It is true that the petitioner held the post of Director, Post Graduate Studies & Research is equivalent to the post of Dean's or Medical Supdt., because the post of Dean's or Medical Supdt. carries the same pay scale."

Mr.Raval, learned Asstt. Govt. Pleader invited attention of the Court to Note 7 to the rules in question which reads as under :

> "Where there is upgradation in the scales of certain posts, it may so happen that on the date of coming into effect of this pay revision, such upgraded posts may be occupied by junior hands, based on earlier cadre relativities. Such employees are not automatically entitled to the revision of pay of these posts. The upgraded posts shall be filled up by the perrons who are entitled to them by virtue of their seniority and the pay revision of the upgraded posts shall come into effect only on such filling up. Even if there is any delay in making such adjustment of personnel, the posting of junior hand shall not be treated as a promotion, but his pay shall be fixed only under normal rules of fixation."

7. Even this note is of no help to the department

inasmuch as it is not the case of the department that any other senior professor had claimed the post of Medical Supdt. or the post of Director, PG Studies. It is born out from the seniority list produced with the petition that the petitioner was at serial no.2 of the seniority list and eventually the persons at serial no.3 and 4 were appointed as Dean, Medical College, Ahmedabad and Medical Supdt., Civil Hospital, Ahmedabad respectively. It is also not in dispute that both these persons who are at serial nos.3 and 4 while holding the post of Dean and Medical Supdt. had got the benefit of revision of pay under the rules in question.

8. In view of the aforesaid discussion, the present petition is allowed. The impugned order passed by respondent no.4 dated 27.6.1991, fixing the pay of the petitioner in the pay scale of Rs.4500 -- 7300/- with effect from 1.1.1986 is hereby quashed and set aside. The respondent authorities are directed to fix pay of the petitioner in the pay scale of Rs.6300 -- 7300/- with effect from 1.1.1986. I see no reason as to why the petitioner should be deprived of the consequential and retiral benefits on the basis of said pay fixation. Therefore, it is ordered that all the consequential benefits be given to the petitioner accordingly.

9. The petition is allowed. Rule is made absolute accordingly with no order as to costs.

(Ravi R. Tripathi, J.)

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